

# MICHIGAN SUPREME COURT



## *Office of Public Information*

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FOR IMMEDIATE RELEASE

### **WARNING NONCITIZEN DEFENDANTS OF IMMIGRATION CONSEQUENCES OF CRIMINAL PLEAS IS FOCUS OF POSSIBLE COURT RULE CHANGE ON MICHIGAN SUPREME COURT'S JANUARY 26 PUBLIC HEARING AGENDA**

#### **U.S. Supreme Court ruling in *Padilla v Kentucky* prompted proposal**

LANSING, MI, January 20, 2011 – Trial judges in criminal cases would be required to ask whether noncitizen defendants have discussed with their attorneys the immigration consequences of pleading guilty or no contest, under one version of a proposed amendment of the criminal procedure rules. This administrative matter (ADM File No. 2010-16) proposes two alternative amendments, which are on the agenda of the Michigan Supreme Court's January 26 public administrative hearing.

Version A of the proposed change states that "if the defendant is not a citizen of the United States, [the judge must] ask the defendant's lawyer and the defendant whether they have discussed the possible risk of deportation that may be caused by the conviction. If it appears to the court that no such discussion has occurred, the court may not accept the defendant's plea until the deficiency is corrected."

Version B would require judges to "advise the defendant who offers a plea of guilty or nolo contendere that such a plea by a noncitizen may result in deportation, exclusion from admission to the United States, or denial of naturalization under the laws of the United States." On the defendant's request, "the court shall allow the defendant a reasonable amount of additional time to consider the appropriateness of the plea in light of the advisement."

The Michigan Supreme Court began its consideration of the proposed amendments, which would revise Michigan Court Rules 6.302 and 6.610 (under Alternative B, but would revise only 6.302 under Alternative A), because of a March 31, 2010 United States Supreme Court decision, *Padilla v Kentucky*, 559 US \_\_\_\_; 130 S Ct 1473; 176 L Ed 2d 284 (2010). Jose Padilla, a legal permanent resident of the United States, argued that he was denied effective assistance of counsel in a criminal case when his lawyer assured him that his guilty plea and five-year prison sentence would not affect his immigration status. In fact, the guilty plea triggered a mandatory deportation to Padilla's country of origin, Honduras, to take effect after Padilla served his prison term. In a majority opinion written by Justice John Paul Stevens, the U.S. Supreme Court held that "counsel must inform her client whether a plea carries the risk of deportation." Noting that statutory changes over the past two decades have made deportation mandatory for a wide variety of crimes, Stevens said that, if a simple reading of the statute would have told the lawyer that her client would face certain deportation, failing to provide that information denies the defendant effective assistance of counsel. In less clear cases, the lawyer must still advise the defendant that the defendant's immigration status could be in jeopardy, Stevens stated.

The Michigan Supreme Court periodically holds administrative hearings to allow interested persons to comment on proposed court rule changes and other administrative matters on the Court's agenda. Persons who wish to address the Court regarding agenda items will be allotted three minutes each to present their views, after which the speakers may be questioned by the Justices. To reserve a place on the agenda, please contact the Office of the Clerk of the Court in writing at P.O. Box 30052, Lansing, Michigan 48909, or by e-mail at [MSC\\_clerk@courts.mi.gov](mailto:MSC_clerk@courts.mi.gov), no later than Monday, January 24, 2011. Requests to speak should include the ADM file numbers for the agenda items the speaker wishes to discuss.

The January 26 hearing will be held in the Supreme Court courtroom on the sixth floor of the Michigan Hall of Justice, 925 W. Ottawa Street, Lansing, Michigan 48915, and will begin at 9:30 a.m. The Court's public administrative conference will follow the hearing.

Also on the Court's agenda:

- ADM File No. 2002-24, Proposed Amendment of Rule 7.3 of the Michigan Rules of Professional Conduct, which govern attorney ethics. MRPC 7.3, which concerns attorneys' contacts with prospective clients, would be amended to provide that "[e]very written, recorded, or electronic communication from a lawyer that seeks professional employment from a prospective client shall include the words 'Advertising Material' prominently featured on the outside envelope, if any, and at the beginning and ending of any written, recorded, or electronic communication, unless the lawyer has a family or prior professional relationship with the recipient. If a written communication is in the form of a self-mailing brochure, pamphlet, or postcard, the words 'Advertising Material' shall appear on the address panel of the brochure, pamphlet, or postcard."
- ADM File No. 2008-12, Proposed Amendment of Rule 2.002 of the Michigan Court Rules. MCR 2.002, which governs waiver or suspension of court fees and costs for indigent persons, would be revised to clarify that the court may deny the party's ability to proceed as an indigent if the court determines that the party's lawsuit is frivolous or malicious.
- ADM File No. 2009-22, Proposed Amendments of Rules 7.212 and 7.215 of the Michigan Court Rules. These appellate practice rules would be amended to allow parties to refer to a case number – rather than attaching a paper copy – when citing unpublished Michigan Court of Appeals decisions that were issued after July 1, 1996. All Court of Appeals decisions released after that date are available online at <http://www.coa.courts.mi.gov>.
- ADM File No. 2010-18. Proposed Amendment of Rule 6.1 of the Michigan Rules of Professional Conduct. The two alternative proposals before the Court would revise attorney ethics rules regarding a lawyer's obligation to do pro bono work, which is work that a lawyer does at no cost or for a reduced fee. Alternative A would retain the rule's existing language, but would clarify that a lawyer would not be subject to disciplinary action or any other disciplinary process to enforce a lawyer's pro bono responsibilities. Alternative B, submitted by the State Bar of Michigan's Representative Assembly, states that all lawyers have a voluntary responsibility to provide pro bono legal services to those of limited means by donating 30 hours or three cases a year, and/or make a financial donation of \$300 to \$500 per year. The bar proposal was amended for publication to include a statement that pro bono services are voluntary and not enforceable through disciplinary proceedings.

- ADM File No. 2010-21 Proposed Amendment of Rule 8.110 of the Michigan Court Rules. MCR 8.110(C)(5) provides that a chief judge must provide quarterly reports to the State Court Administrator on “felony cases in which there has been a delay of more than 301 days between the order binding the defendant over to circuit court and adjudication [and] misdemeanor cases and cases involving local ordinance violations that have criminal penalties in which there has been a delay of more than 126 days between the date of the defendant’s first appearance on the warrant and complaint or citation and adjudication.” The proposed amendment would exclude cases that are stayed during interlocutory appeal from being included in the group of cases that a chief judge must report to the State Court Administrator as being delayed beyond the time guidelines.

These and other proposed or recently-adopted rules may be viewed online at <http://www.courts.michigan.gov/supremecourt/Resources/Administrative/index.htm#proposed>.

Administrative hearing agendas may be viewed online at <http://www.courts.michigan.gov/supremecourt/Resources/Administrative/AdminConf.htm>.

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